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MICHAEL W. DOBBINS CLERK, U.S. DISTRICT COURT
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BRICKSTOP CORPORATION,) CLERK, U.S. DISTRICT (
Plaintiff,	į.
v.	08CV2690
VALLEY VIEW INDUSTRIES, H.C., INC.,	JUDGE GETTLEMAN MAG. JUDGE COLE
Defendant.)·

Complaint

Plaintiff BrickStop Corporation, for its cause of action against Valley View Industries, H.C., Inc., alleges and states as follows:

Jurisdiction

- 1. This is an action for trade dress infringement, unfair competition, and trademark infringement in violation of 15 U.S.C. § 1125(a), copyright infringement in violation of 17 U.S.C. § 501, deceptive trade practices in violation of 815 III. Comp. Stat. Ann. 510, and unfair competition in violation of 815 III. Comp. Stat. Ann. 505. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1338(a), (b), 28 U.S.C. § 1332, and 28 U.S.C. § 1367.
- 2. Venue is proper under 28 U.S.C. § 1391(b) and (c) in that Defendant Valley View Industries, H.C., Inc. is a corporation that does significant business and advertising in this judicial district, and a substantial part of the events or omissions giving rise to this complaint occurred in this judicial district.

The Parties

3. Plaintiff BrickStop Corporation, ("BrickStop") is a corporation duly organized under the laws of Ontario, Canada with a principal place of business at 205 Champagne Drive, Unit 3A, Toronto, Ontario M3J 2C6, Canada.

4. Defendant Valley View Industries, H.C., Inc., is a corporation organized under the laws of Illinois with a principal place of business at 13834 Kostner Avenue, Crestwood, Illinois 60445.

Facts Common to All Counts

BrickStop's Background

- 5. For nearly twenty years, BrickStop has designed, manufactured, and sold paving edging restraint systems for, *inter alia*, landscapers, landscape architects, and home owners throughout the world.
- 6. Paving edging restraint systems are used to retain brick and stone installations to ensure low maintenance and long life of landscaping designs, such as patios and walks.
- 7. Since 2001, BrickStop has manufactured and sold two paver edging products under the names B.E.A.S.T. and Son of the B.E.A.S.T. (collectively "B.E.A.S.T."). BrickStop's B.E.A.S.T. paver edging product incorporates an original, distinctive, ornamental design (the "BrickStop Design"). Attached as Exhibit A is an image of BrickStop's B.E.A.S.T. product incorporating the BrickStop Design.
- 8. BrickStop has sold over 35 million feet of the B.E.A.S.T. paver edging featuring the distinctive BrickStop Design.
- 9. BrickStop has spent several hundred thousand dollars advertising and promoting the B.E.A.S.T. paver edging featuring the distinct BrickStop Design.
- 10. BrickStop has accrued significant goodwill in its business and product designs in that BrickStop products have been selected for use in numerous prominent locations, such as the Korean War Memorial and the official residence of the Archbishop of the Czech Republic.

- 11. BrickStop actively and prominently promotes the B.E.A.S.T. product in print advertisements. Exhibit B, attached hereto, is one such advertisement (the "BrickStop Ad"), which prominently shows the B.E.A.S.T. product and the BrickStop Design.
- 12. The BrickStop Ad features images (the "BrickStop Images") that constitute original works, each of which is copyrightable subject matter under the laws of the United States.
- 13. On May 1, 2008, BrickStop submitted the requisite fees and deposits for the following copyrights:
 - a. Application entitled "Beast Artwork";
 - b. Application entitled "Beast Artwork", a derivative of Graphic Artwork for the
 "Beast Paver Edging", which added additional graphic artwork;
 - c. Application entitled "Beast Brochure", a derivative of Graphic Artwork for the "Beast Artwork", which added text and additional graphic artwork; and
 - d. Application entitled "Beast Brochure", a derivative of Graphic Artwork and Text for the "Beast Brochure", which added additional graphic artwork and text.

Attached hereto as Exhibit C are copies of the copyright registration forms.

14. BrickStop has used the BrickStop Design for an extensive amount of time in its print advertisements, including brochures, and on other promotional items, including T-shirts. BrickStop has expended substantial amounts of money promoting the BrickStop Design. As such, the BrickStop Design serves to identify BrickStop as the source of the goods bearing the design.

Valley View's Conduct

- 15. Valley View is a competitor with BrickStop in that Valley View designs, manufactures, and sells paver edging restraint systems. One product sold by Valley View is its Diamond Paver Edge product.
- View Design") that is substantially similar to, if not identical to, the BrickStop Design featured on the BrickStop B.E.A.S.T. product. Attached as Exhibit D is an image of a section of paver edging sold by Valley View as the Diamond Paver Edge.
- 17. Upon information and belief, Valley View created the Valley View Design by engaging the services of a toolmaker to make a mold using a piece of BrickStop's B.E.A.S.T. product incorporating the BrickStop Design. Upon information and belief, Valley View used this mold to create the Valley View Design.
 - 18. Valley View copied the BrickStop Design.
- 19. Valley View has promoted its Diamond Paver Edge product at one of the largest trade shows in this industry. Furthermore, Valley View has actively and prominently promoted its Diamond Paver Edge product in this judicial district with potential customers, and in advertisements, including, but not limited to, print advertising, brochures and the internet. Exhibit E, attached hereto, is one such advertisement (the "Valley View Ad"), which prominently shows the Valley View Design incorporated into the Diamond Paver Edge product.
- 20. The Valley View Ad contains a copy of the BrickStop Images with Valley View's Diamond Paver Edge product superimposed over part of BrickStop's the B.E.A.S.T. product.

- 21. Because of the striking similarities between the BrickStop and Valley View designs and advertisements, BrickStop sent Valley View a letter to try and amicably resolve the matter. Valley View refused to stop selling the Valley View Design.
- 22. Although Valley View claimed to BrickStop that it had stopped using the BrickStop Images, Valley View now displays another copy of the images in its advertising on the internet. Attached as Exhibit F is a printout from Valley View's website of the latest image Valley View uses incorporating BrickStop's Design and Images.

First Cause of Action Trade Dress Infringement (15 U.S.C. § 1125(a))

- 23. BrickStop incorporates by reference and reallages Paragraphs 1 through 22, above, as if fully set forth herein.
- 24. BrickStop has continuously and consistently used original, distinctive, and ornamental features incorporated into the BrickStop Design in commerce as trade dress to identify its B.E.A.S.T. paver edging product since at least as early as 2001. BrickStop added additional original, distinctive, and ornamental features in 2005 without changing the existing features. The BrickStop Design serves to identify BrickStop as the source of the goods bearing the design because relevant consumers have come to associate the BrickStop Design with BrickStop or have come to associate the BrickStop Design as a designation of source from a single manufacturer.
- 25. The BrickStop Design has no functional requirement, and its use on the paver edging product is original, ornamental, and distinctive.
- 26. Valley View adopted the Valley View Design after basing it on the prior BrickStop Design.

- 27. A visual inspection of the BrickStop Design and Valley View Design, as shown in Exhibits A and D, respectively, demonstrates that the Valley View Design is nearly identical and confusingly similar to the BrickStop Design and, as such, is likely to cause confusion, mistake, or deception to the relevant public as to source, sponsorship, or approval of such goods. Valley View is palming off its own goods as those of BrickStop.
- 28. Upon information and belief, Valley View has deliberately and willfully infringed BrickStop's trade dress in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a), and BrickStop has been and will continue to be irreparably harmed by such infringement unless this Court enjoins Valley View from its continuing infringement pursuant to 15 U.S.C. § 116.
- 29. As a result of Valley View's deliberate and willful infringement of BrickStop's trade dress, BrickStop is entitled to damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized under 15 U.S.C. § 1117.

Second Cause of Action Unfair Competition (15 U.S.C. § 1125)

- 30. BrickStop incorporates by reference and reallages Paragraphs 1 through 29, above, as if fully set forth herein.
- 31. The BrickStop Ad uses the BrickStop Design to identify BrickStop as the source of the goods bearing the design.
- 32. The BrickStop Design is an indication of source of origin of the goods sold by BrickStop. The BrickStop Design as used by BrickStop has acquired a substantial and favorable reputation and goodwill in connection with the goods offered by BrickStop, including the B.E.A.S.T. paver edging product. The BrickStop Design is prominently featured in its advertising.

- 33. Valley View's unauthorized use of the BrickStop Images within its advertising, which advertising shows the BrickStop Design, is likely to and is intended to cause confusion or mistake or to deceive as to the affiliation, connection or association of Valley View with BrickStop or the possible origin, sponsorship or approval of Valley View's goods with BrickStop.
- 34. Valley View's use of the Valley View Ad is a misrepresentation that Valley View is affiliated with BrickStop, which constitutes unfair competition with BrickStop.
- 35. Upon information and belief, Valley View has deliberately and willfully committed acts of unfair competition in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125. Valley View's conduct irreparably damaged BrickStop, and in consequence thereof, unless Valley View is restrained and enjoined, BrickStop will suffer further and irreparable damage for which BrickStop has no full and adequate remedy at law. As a result of Valley View's deliberate and willful conduct, BrickStop is entitled to damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized by law.

Third Cause of Action Trademark Infringement (15 U.S.C. § 1125)

- 36. BrickStop incorporates by reference and realleges Paragraphs 1 through 35, above, as if fully set forth herein.
- 37. Since as early as 2001, BrickStop has used the BrickStop Design as a logo (the "Design Logo") in commercial advertising, including in brochures and on t-shirts. Consumers have come to associate the Design Logo with BrickStop and as such BrickStop has developed common law trademark rights in the Design Logo.

- 38. Valley View's adoption and use of the Design Logo to identify Valley View's Diamond Paver Edge product constitutes use of a copy and colorable imitation of the Design Logo, and is likely to cause confusion, mistake, or to deceive the purchasing public into believing that the goods of Valley View emanate from the same source of the goods previously provided by BrickStop, or that there is some connection, sponsorship, or affiliation between the goods of BrickStop and Valley View.
- 39. Valley View's conduct constitutes an infringement of BrickStop's common law trademark and is actionable under the provisions of 15 U.S.C. § 1125.
- 40. Upon information and belief, Valley View's conduct has been and continues to be with the intent to willfully appropriate the marks and goodwill of BrickStop and to intentionally deceive the purchasing public.
- 41. Valley View is aware of the prior rights of BrickStop and will continue its conduct as set forth above to the irreparable damage to BrickStop unless enjoined by the court, whereby BrickStop is without a full and adequate remedy at law. As a result of Valley View's deliberate and willful conduct, BrickStop is entitled to damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized by law.

Fourth Cause of Action Copyright Infringement (15 U.S.C. § 501)

- 42. BrickStop incorporates by reference and realleges Paragraphs 1 through 41, above, as if fully set forth herein.
- 43. BrickStop's various advertisements, including the BrickStop Ad as shown in Exhibit B, and the BrickStop Images contain original work fixed in a tangible medium of expression and each is copyrightable subject matter under the laws of the United States.

- 44. BrickStop has applied for copyright protection of its original works, including the BrickStop Ad and BrickStop Images, and filed numerous applications for copyright, paid the requisite fees, and submitted the required deposits to obtain copyright protection of the BrickStop works. BrickStop is the owner of the copyrights for its original works, including the BrickStop Ad.
- 45. The Valley View Ads, as shown in Exhibits E and F, have been published and disseminated into interstate commerce and are infringing copies of the BrickStop Ad and Images and infringe BrickStop's copyrights identified in the four copyright applications.
- 46. Valley View had access to the BrickStop Ad by way of BrickStop's widespread advertisements featuring the BrickStop Ad and Images.
- 47. The Valley View Ads are substantially similar to the original work contained in the BrickStop Ad and Images so as to constitute copyright infringement.
- 48. Upon information and belief, Valley View's acts of infringement were willful and intentional.
- 49. Valley View's infringement of BrickStop's copyrights caused irreparable damage to BrickStop, and in consequence thereof, unless Valley View is restrained and enjoined, BrickStop will suffer further and irreparable damage for which BrickStop has no full adequate remedy at law. As a result of Valley View's deliberate and willful conduct, BrickStop is entitled to damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized by law.

Fifth Cause of Action Deceptive Trade Practices (815 Ill. Comp. Stat. Ann. 510) (Design)

- 50. BrickStop incorporates by reference and realleges Paragraphs 1 through 49, above, as if fully set forth herein.
- 51. Valley View's adoption and use of the BrickStop Design in Valley View's products, particularly the Diamond Paver Edge product, causes a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services in violation of 815 Ill. Comp. Stat. Ann. 510/2(a)(2), and BrickStop has been and will continue to be irreparably harmed by such infringement unless this Court enjoins Valley View from its continuing infringement pursuant to 815 Ill. Comp. Stat. Ann. 510/3.
- 52. Upon information and belief, Valley View's conduct was, and continues to be, deliberate and willful. As a result of Valley View's deceptive trade practices, BrickStop is entitled to damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized under 815 Ill. Comp. Stat. Ann. 510.

Sixth Cause of Action Deceptive Trade Practices (815 Ill. Comp. Stat. Ann. 510) (Advertisement)

- 53. BrickStop incorporates by reference and realleges Paragraphs 1 through 52, above, as if fully set forth herein.
- 54. The Valley View Ad, which features the Valley View Diamond Paver Edge product superimposed on top of the BrickStop's Ad, falsely represents that Valley View's goods have sponsorship, approval, status, affiliation, or connection with BrickStop, and/or otherwise creates a likelihood of confusion or misunderstanding, in violation of 815 Ill. Comp. Stat. Ann.

510/2(a)(5), and/or (12), and BrickStop has been, and will continue to be, irreparably harmed by such infringement unless this Court enjoins Valley View from its continuing infringement pursuant to 815 Ill. Comp. Stat. Ann. 510.

55. Upon information and belief, Valley View's conduct was deliberate and willful. As a result of Valley View's deceptive trade practices, BrickStop is entitled to damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized under 815 Ill. Comp. Stat. Ann. 510.

Seventh Cause of Action Unfair Competition under the Consumer Fraud and Deceptive Business Practices Act (815 Ill. Comp. Stat. Ann. 505)

- 56. BrickStop incorporates by reference and realleges Paragraphs 1 through 55, above, as if fully set forth herein.
- 57. Valley View's deceptive trade practices, as identified above, constitute unfair competition in violation of 815 Ill. Comp. Stat. Ann. 505/2, and BrickStop has been, and will continue to be, irreparably harmed by such unfair competition unless this Court enjoins Valley View from its continuing infringement pursuant to 815 Ill. Comp. Stat. Ann. 505/10a.
- 58. Upon information and belief, Valley View's conduct was deliberate and willful. As a result of Valley View's unfair competition practices, BrickStop has suffered damages and is entitled to recover damages, Valley View's profits, attorneys' fees and costs, and any and all other relief authorized under 815 Ill. Comp. Stat. Ann. 505.

WHEREFORE, BrickStop demands a judgment against Defendant and prays that this Court will:

- a. Preliminarily and permanently enjoin Valley View, its agents, servants, employees, and attorneys and all persons in active concert or participation with them or acting for, with, by, through, or under them, from infringing BrickStop's trade dress and trademarks, either alone or in association with other terms; from unfair competition with BrickStop; and from infringing BrickStop copyrights.
- b. Grant to BrickStop an award and accounting of Valley View's profits, any damages sustained by BrickStop, and that all profits or damages to be trebled, the costs of this action, and BrickStop's attorneys' fees.
- c. Award punitive damages for Valley View's unlawful acts;
- d. Grant to BrickStop such further relief as the Court may deem equitable and proper.

Respectfully Submitted

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Overland Park, Kansas 66210

T: (913) 647 – 9050 F: (913) 647 – 9057

ATTORNEYS FOR PLAINTIFF BRICKSTOP CORPORATION

Exhibit A

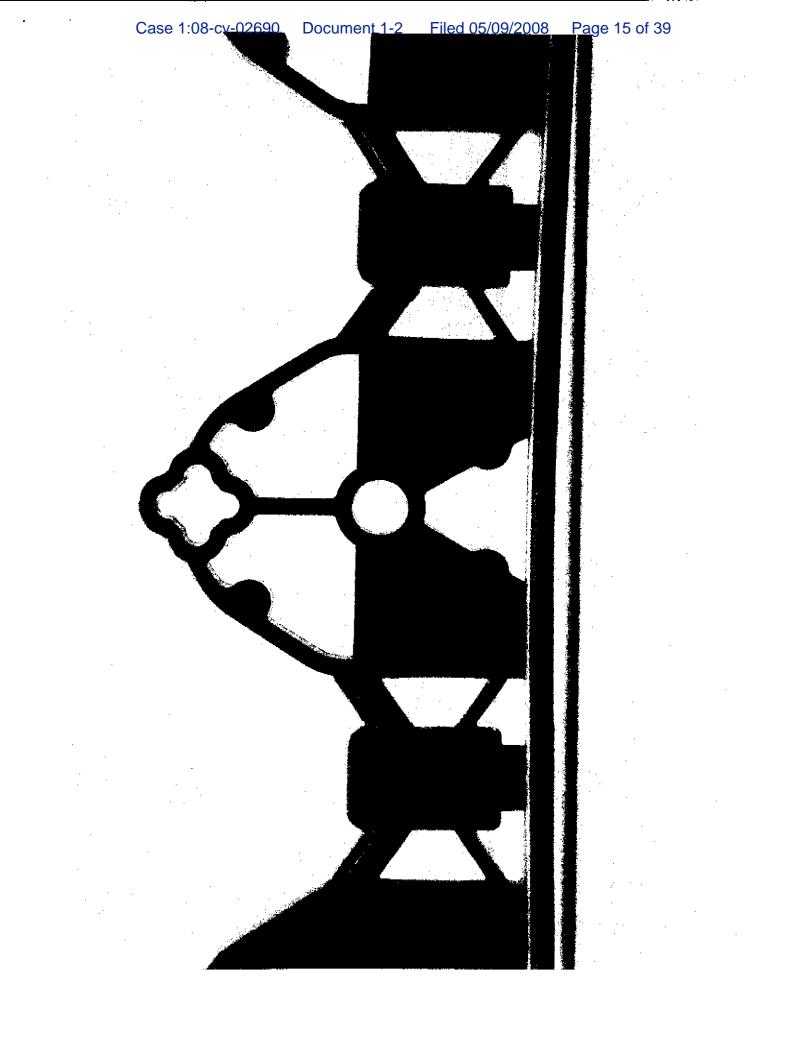
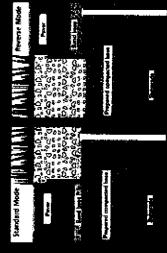


Exhibit B

bet of paver installations have done into 15 years experience and millions of the development of B EA.S 1.

 AMAZING STRAIGHT LINES PAVERS NEVER LOOKED SUPER STRENGTH SUPER FLEXIBILITY PERFECT CURVES THIS GOOD

walkway or patio, the most important part of your project is insuring that the pavers around the perimeter of the pavers is esseptial for eliminatory horizorial recepting ere installed property. An edge restraint Worther you are creating a driveway of the pavers and loss of the heading sand



Standard Mode as shown at left, of Reverse Mode shown at right side of BEAST edging.



3 inches deep x 2.5 inches wide 243 84 cm long x 4.45 cm high 8 feet long x 1.75 inches high **Specifications**

Daveways: Nail every 81-1271-20 Jcm - 30.5cm

Patios and Walkways Nail every 121-201

Installation Tips

30.5cm - 50.8cm

Free Technical Support 1-800-565-2599

2.62 cm deep x 5.35 cm wide

Pavers can be positioned on either



with superior stengand flexibility.

Available at:

Brickstop Corporation distributes paver edging around the world.

15 years in business has taught us a lot about paver edging and the most important things we've learned are that:

- You must use edging for a perfect, long-lasting finish.
 - It has to be easy to use.
- You must have just one piece that does both straight lines and curves.
- it must withstand a wide temperature variance,
- it must use easy to find common nails.
 it must be designed to permit a lattice nailing pattern for strength and stability.
- It must allow natural vegetation growth.
- If must be backed up by a company with experience and staying power.

Exhibit C

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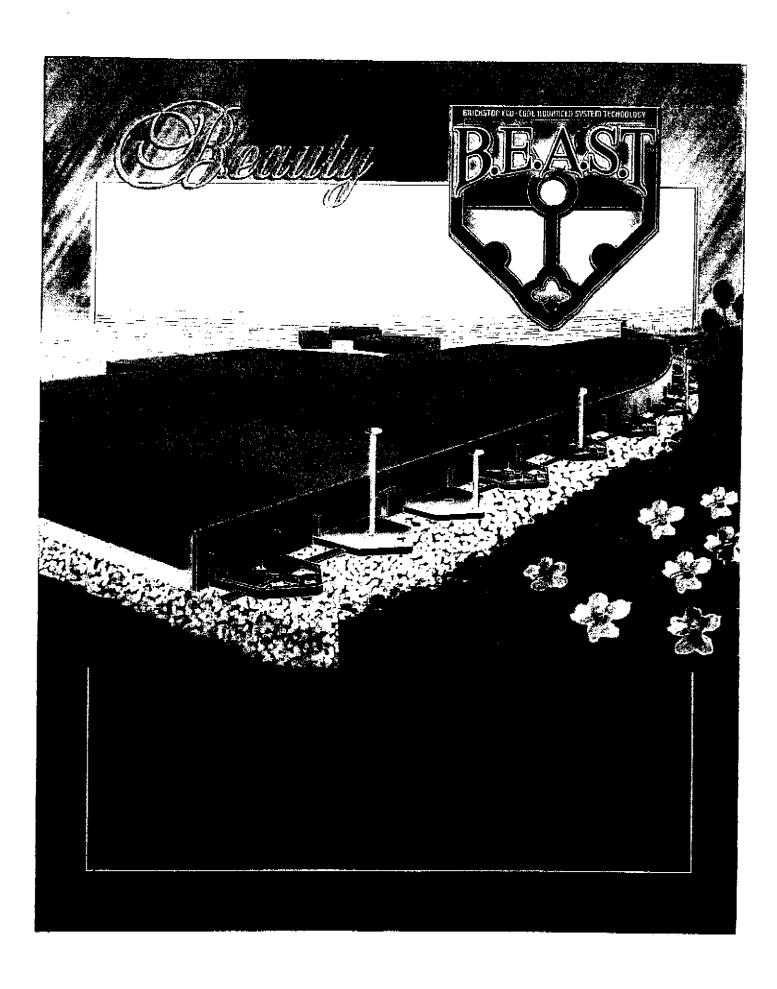
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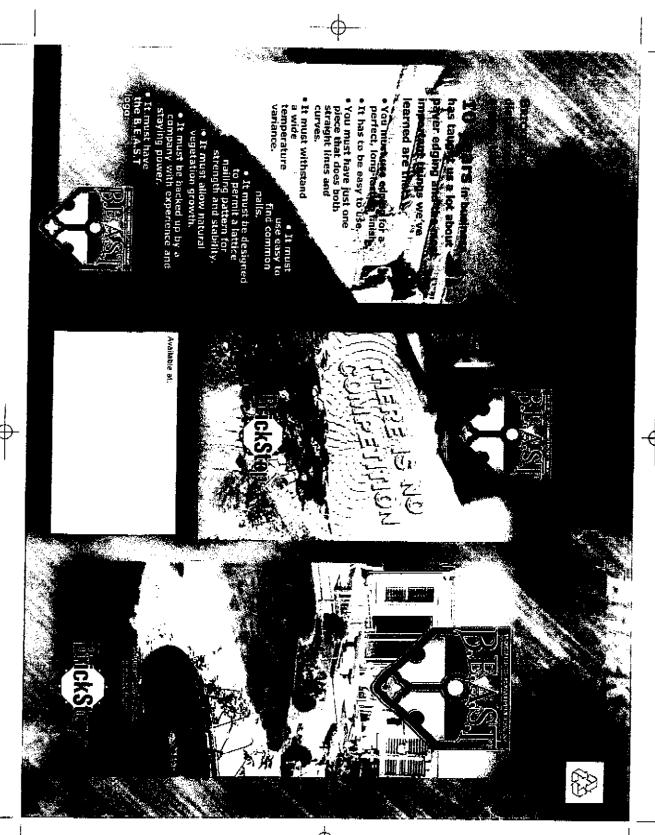
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Exhibit D

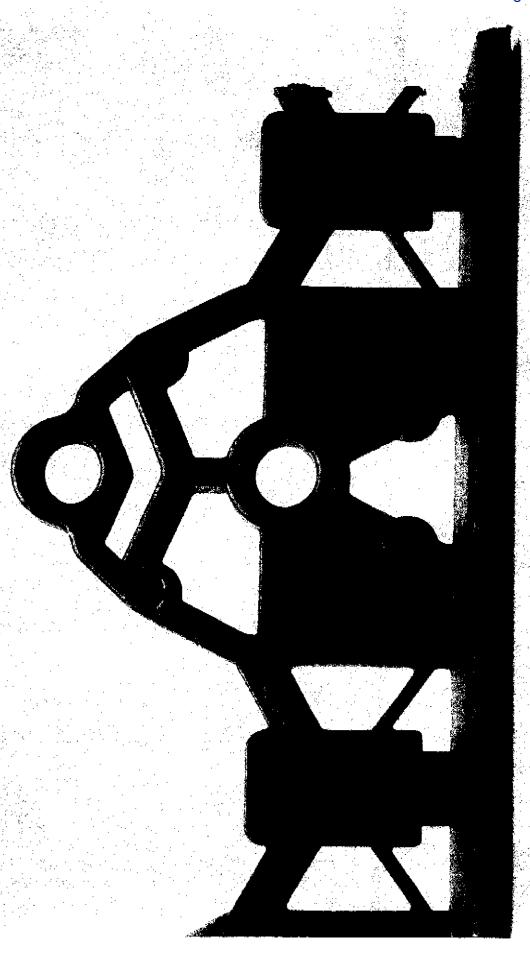
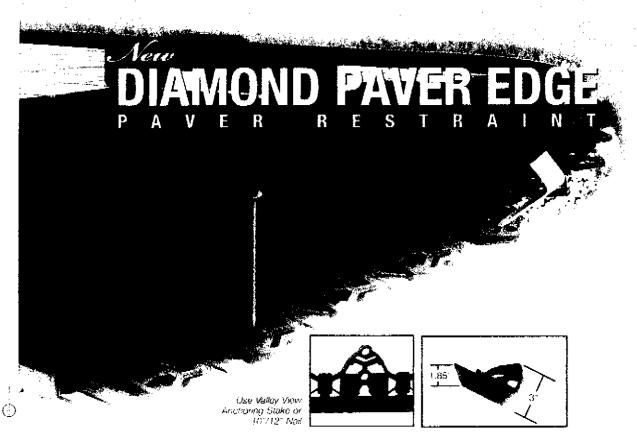
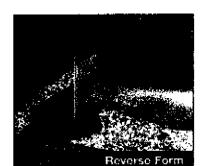


Exhibit E

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The **NEW Diamond Paver Edging** is the most economically priced paver restraint on the market!! It has been added to our existing paver restraint product line. This is our most **Solid** paver restraint yet, though it can be easily converted to flexible.

Anchoring stakes and spikes are recommended and sold separately.

DIAMOND PAVER EDGE ORDERING INFORMATION

Merri #	Description	Pack		
OPF-8-10	6 Diamond Paver Edge	10 per bundle		
DPE-8-030	9 Dismond Paver Edge	630/patkit (63 trundles of 10)		
BAS	Steel bulk anchor stake	200		

har additional pave regularits, displays and accessiones, go to www.valleyviewed.com.

YOUR LOCAL DISTRIBUTOR:

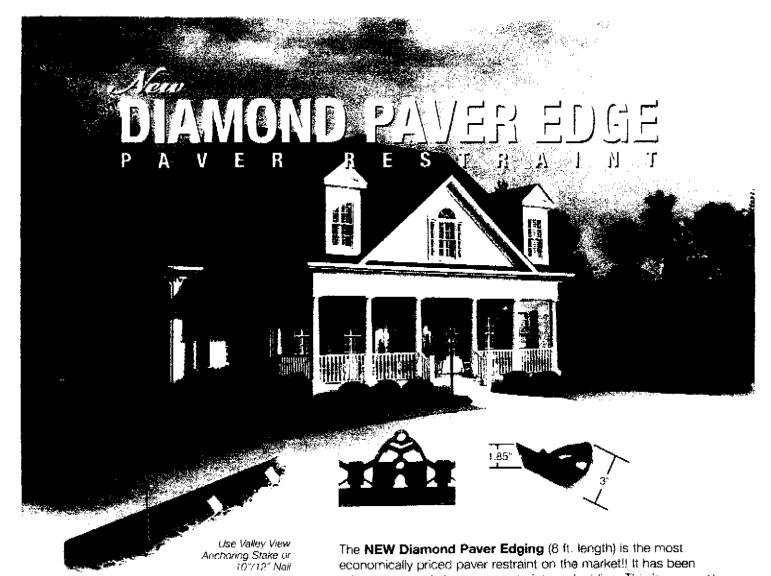




"Setting the landscape industry standard"

Tot Frog. (800) 323-9369 • (800) 323-5262 FAX international, (708) 597-0886 • (708) 597-9959 FAX

Exhibit F



30° 4 5 5 5

Save \$. Buy in paller quantity. Pallet consists of 63 bundles of 10. added to our existing paver restraint product line. This is our most **Solid** paver restraint yet, though it can be easily converted to flexible 8' lengths. **Additional anchor stakes recommended and sold**

separately. Five anchor stakes recommended per

DIAMOND PAVER EDGE ORDERING INFORMATION

ltem #	Description	Pack
DPE-8	8' Diamond Paver Edge	10 per buridle
DPE 8	a Diamona Paver Edge	630/pallet (63 pundles of 10)
BAS	Steel bulk anchor stake	200

For additional paver restruits, displays and accessories, go to www.velleyviewind.com.

YOUR LOCAL DISTRIBUTOR:

Valley View Industries 13834 S. Kostner Ave. Crestwood, IL 60445 www.valleyview.nd.com nfo@valleyview.nd.com

8' length.



"Setting the landscape industry standard"

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